

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works	(2) MEETING DATE 1/29/2013	(3) CONTACT/PHONE Jeff Werst, Design Engineer (805) 781-4480	
(4) SUBJECT Submittal of bid opening report for the Widening of Templeton Road from Bluebird Hill Lane to South El Pomar near Templeton, to award the subject contract to Whitaker Construction Group, Inc., the lowest responsive bidder, in the amount of \$633,274; and authorize a budget adjustment, by a 4/5th's vote, in the amount of \$590,000. Contract No. 300386, Federal Project No. HRRRL-5949(111). District 5.			
(5) RECOMMENDED ACTION In accordance with applicable State Law, it is our recommendation that your Honorable Board: 1. Find that the bid submitted by Raminha Construction, Inc. is non-responsive due to failure to meet the Disadvantaged Business Enterprise (DBE) contract goal of 4% and its failure to demonstrate an adequate good faith effort to meet said DBE participation goal; and 2. Adopt the "Evaluation of Good Faith Effort of Raminha Construction, Inc." memorandum dated December 27, 2012 (Attachment "A") and the "Good Faith Effort Reconsideration Committee Determination" memorandum dated January 15, 2013 (Attachment "C") as the Board's written decision in support of the finding in recommendation 1 above; and 3. Reject the bid submitted by Raminha Construction, Inc. on the grounds of non-responsiveness; and 4. Award the subject contract to Whitaker Construction Group, Inc., the lowest responsive, bidder, with a bid of \$633,274; and 5. Authorize the Public Works Director or his designee to approve change orders for a contingency amount up to \$63,327, plus an additional amount of \$60,000 for traffic control and supplemental work, for a final total construction amount of \$756,601; and 6. Authorize a budget adjustment, by a 4/5th's vote, in the amount of \$590,000 for a total project budget of \$1,650,000.			
(6) FUNDING SOURCE(S) Prop 1B, HRRR, Road Fund	(7) CURRENT YEAR FINANCIAL IMPACT \$1,588,161	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT { } Consent    { } Presentation    { } Hearing (Time Est. _____) <b>{X}</b> Board Business (Time Est. 60 min.)			
(11) EXECUTED DOCUMENTS { } Resolutions    { } Contracts    { } Ordinances <b>{X}</b> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) 19001232		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: 1213055 <b>{X}</b> 4/5th's Vote Required    { } N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY { } N/A    Date 12/20/12; #2	
(17) ADMINISTRATIVE OFFICE REVIEW  Emily Jackson			
(18) SUPERVISOR DISTRICT(S) District 5 -			

13JAN29-BB-1

## County of San Luis Obispo



TO: Board of Supervisors

FROM: Public Works  
Jeff Werst, Design Engineer  
Michael Britton, Project Manager

VIA: Dave Flynn, Deputy Director of Public Works

DATE: 1/29/2013

SUBJECT: Submittal of bid opening report for the Widening of Templeton Road from Bluebird Hill Lane to South El Pomar near Templeton, to award the subject contract to Whitaker Construction Group, Inc., the lowest responsive bidder, in the amount of \$633,274; and authorize a budget adjustment, by a 4/5th's vote, in the amount of \$590,000. Contract No. 300386, Federal Project No. HRRRL-5949(111). District 5.

### **RECOMMENDATION**

In accordance with applicable State Law, it is our recommendation that your Honorable Board:

1. Find that the bid submitted by Raminha Construction, Inc. is non-responsive due to failure to meet the Disadvantaged Business Enterprise (DBE) contract goal of 4% and its failure to demonstrate an adequate good faith effort to meet said DBE participation goal; and
2. Adopt the "Evaluation of Good Faith Effort of Raminha Construction, Inc." memorandum dated December 27, 2012 (Attachment "A") and the "Good Faith Effort Reconsideration Committee Determination" memorandum dated January 15, 2013 (Attachment "C") as the Board's written decision in support of the finding in recommendation 1 above; and
3. Reject the bid submitted by Raminha Construction, Inc. on the grounds of non-responsiveness; and
4. Award the subject contract to Whitaker Construction Group, Inc., the lowest responsive, bidder, with a bid of \$633,274; and
5. Authorize the Public Works Director or his designee to approve change orders for a contingency amount up to \$63,327, plus an additional amount of \$60,000 for traffic control and supplemental work, for a final total construction amount of \$756,601; and
6. Authorize a budget adjustment, by a 4/5th's vote, in the amount of \$590,000 for a total project budget of \$1,650,000.

## DISCUSSION

### Project Background Information

The Templeton Road Widening Project proposes to improve a 0.6 mile portion of Templeton Road between South El Pomar Road and Bluebird Hill Lane. The project will provide two 12-foot wide travel lanes with a 4-foot minimum paved shoulder. The project's goal is to improve safety by providing recovery area for vehicles along Templeton Road as well as improving travel for cyclists.

The scope of project construction will include cutting back existing roadway slopes, placing fill in low areas, removal of roadside obstacles, realigning an existing roadside ditch, and replacing several culverts.

In accordance with direction from your board, bids for the subject contract were opened on December 20, 2012.

Eleven bids were received. They are as follows:

	<u>Bid Amount</u>	<u>DBE Participation</u>
Engineer's Estimate	\$792,547.50	4% goal
Raminha Construction, Inc.	\$587,719.00	0%
Whitaker Construction Group, Inc.	633,274.00	5.2%
CalPortland Construction	672,962.60	15%
Rockwood General Contractors, Inc.	682,245.24	*
John Madonna Construction Co., Inc.	694,212.80	5.44%
R. Burke Corporation	722,570.35	4%
Granite Construction Company	742,448.00	5.6%
Andrew Brown General Engineering, Inc.	746,485.64	15.9% **
Ferravanti Paving	748,071.78	3.34% **
Souza Construction, Inc.	780,871.20	4.84%
Papich Construction, Inc.	904,409.00	4.37%

\* Did not include the required DBE Participation form with bid; considered non-responsive.

\*\* Bidder listed a firm that was a SBE, but not certified DBE.

### General Discussion

The Disadvantaged Business Enterprises (DBE) Contract Goal for this project was 4%. Bidders were required by the bid documents to meet this goal or to show a good faith effort to meet the goal by using DBE subcontractors, material suppliers, or trucking companies such that 4% of their total bid amount was going towards DBEs. Whether or not the DBE Contract Goal was met by the Bidders, the Bidders were also required to provide documentation that adequate Good Faith Efforts (GFE) were made to meet the goal. While two of the three low bidders achieved the DBE participation goal, the lowest bidder, Raminha Construction, Inc. (RCI) did not meet the goal, and consideration of the responsiveness of their bid therefore depended on staff evaluation of the adequacy of their GFE, which staff subsequently determined to be inadequate (Attachments "D" and "E").

Public Works Department staff provided written notice to RCI stating the Department's intent to recommend to the County Board of Supervisors to find RCI's bid non-responsive for failure to (1) meet the DBE contract goal of 4% and (2) demonstrate a good faith effort to meet the DBE participation goal for this project. The notice included a memorandum providing a detailed evaluation of RCI's GFE, and provided an opportunity for RCI to seek a reconsideration of the Department's determination and intended recommendation to the Board. RCI subsequently appeared before a reconsideration panel to respond to the Department's determination. The reconsideration panel ultimately upheld the original determination by the Department, as described in the memorandum dated January 15, 2013, which is included with this Board letter as Attachment "C". It is therefore staff's recommendation that RCI's bid be rejected as non-responsive, and that the contract be awarded to the next lowest bidder, Whitaker Construction Group, Inc.

### GFE Evaluation and Bid Responsiveness

As indicated in Section 2-1.04 of the Contract Special Provisions, this project is subject to Title 49 Code of Federal Regulations Part 26 (49 CFR 26), and the Regulations in their entirety were incorporated by reference into the bidding documents. The federal regulations, as administered by Caltrans Local Assistance, include requirements to encourage participation by Disadvantaged Business Enterprises (DBE).

To be a designated DBE, a firm must meet the definition of a disadvantaged business enterprise and be certified by the State as such. The Notice to Bidders set the DBE contract goal at 4%. Section 2-1.04 of the Contract Special Provision required bidders to meet the DBE contract goal, or to demonstrate that good faith efforts were made to meet the goal. Failure to meet the goal or submit adequate evidence of a good faith effort would result in the bid being considered nonresponsive. (Applicable pages from the Notice to Bidders, Bid Proposal and Special Provisions sections of the Project Documents, as advertised, are included with this letter as Attachment "J".)

Public Works Department staff has determined that the bid of Raminha Construction, Inc. (RCI) is non-responsive due to the failure to meet the DBE contract goal of 4% or to demonstrate an adequate good faith effort to meet the DBE participation goal for this project. The County's evaluation of the good faith effort was based on the "Guidance Concerning Good Faith Efforts" contained in 49 CFR Part 26, Appendix A, included in Attachment "A". While this CFR guidance document cautions agencies against requiring a bidder to meet a contract participation goal, it requires the County to make a fair and reasonable judgment of whether the bidder was actively and aggressively trying to meet the goal, considering the quality, quantity and intensity of the efforts the bidder made prior to bidding. After reviewing the good faith effort submittal of RCI, staff determined the following facts supported the conclusion that RCI did not satisfy the requirement of demonstrating a good faith effort:

- RCI did not designate portions of the work available to DBE firms in a manner consistent with the types of work performed by available DBE subcontractors and suppliers; and
- RCI did not solicit all DBE firms who have the capability to perform the items of work it claimed to make available to DBE firms; and
- RCI did not properly take contract goals into consideration when negotiating with DBE firms.

In addition, when taking into account the performance of the other responsive bidders to meet the goal, staff determined that, with reasonable effort, RCI could have met the goal. The reasons for staff's determination of the inadequacy of the good faith effort of RCI are more fully discussed in the "Evaluation of Good Faith Effort" memorandum which is attached to this letter as Attachment "A".

Subsequent to making this determination, our Department provided written notice to RCI stating our intent to recommend to your Board that RCI's bid be rejected as non-responsive, and that the contract be awarded to the next lowest bidder, Whitaker Construction Group, Inc. A copy of this notice is included with this letter as Attachment "B". The written notice also provided an opportunity for RCI to request administrative reconsideration of the Department's determination regarding the good faith effort evaluation, in conformance with 49 CFR Part 26.53.

### Reconsideration of GFE Evaluation

After receiving the notice letter and GFE evaluation memorandum, RCI notified the Department that they wished to have administrative reconsideration of the Department's determination. The notice from RCI, as well as additional documentation responding to the Department's GFE evaluation was provided on behalf of RCI by P. Terence Schubert, RCI's attorney. A copy of RCI's reconsideration request letter and additional documentation letter from P. Terence Schubert are included with this Board letter as Attachments "F" and "G", respectively.

A reconsideration meeting was held on January 9, 2013 to allow RCI to respond to the preliminary finding by the Public Works Design Division that RCI did not meet the 4% DBE contract goal and did not make a good faith effort to meet the goal. The Reconsideration Committee, including two members outside the department (Caltrans and the City of Atascadero), considered the information provided by County staff (Attachment "H" – Clerk's File) and by RCI, as well as oral presentations made by RCI at the meeting. The Reconsideration Committee made the finding that "in its judgment, weighing the quality, quantity and intensity of the efforts made by the low bidder, that RCI did not demonstrate good faith efforts to meet the 4% DBE contract goal," thus upholding the original determination by staff. A complete discussion of the Reconsideration Panel's findings is included in a memorandum which is attached to this Board letter as Attachment "C". In addition to the information presented at the meeting by RCI and its attorney, P. Terence Schubert, a subsequent letter from Mr. Schubert was received by the reconsideration panel members at the end of the day on January 14, 2013 (Attachment "I"). It was the judgment of panel members that the information contained in the letter did not provide compelling argument which would impact their decision to affirm the determination made by staff.

The Templeton Road project is funded under a Federal Safety grant. Caltrans oversees the delivery of these projects and holds agencies to a performance standard for delivery. Should the project be delayed or deferred, Caltrans would no longer accept either Federal Safety Grant or Federal Safe Route to School applications from the County. In addition, failure to comply with DBE criteria may subject the County to returning Federal Funds if subsequent FHWA audits determine lack of compliance.

### OTHER AGENCY INVOLVEMENT/IMPACT

Caltrans has authorized construction funding for this project and will act, on behalf of the Federal Highway Administration, as the lead federal agency.

This project is funded by the Federal Highway Administration's (FHWA) High Risk Rural Roads (HRRR) Program, as administered by Caltrans Local Assistance. This funding requires the County to advertise, award, and administer the construction contract in accordance with the Local Assistance Procedures Manual and FHWA program requirements. The DBE Contract Goal and GFE effort requirements are consistent with terms of the Disadvantaged Business Enterprise (DBE) Implementation Agreement approved by your Board on May 19, 2009 and on file with Caltrans. In order to receive FHWA funding for a project, the County must establish DBE contract participation goals for the project.

The California Department of Fish and Game (now California Department of Fish and Wildlife), Army Corps of Engineers, and the Regional Water Quality Control Board have all advised on the project and issued their appropriate permits. Various utility companies (AT&T, PG&E, and Nacimiento Water Pipeline) have provided appropriate input and prepared for their relocations where necessary.

The Templeton Area Advisory Group has been kept apprised of the project scope and schedule.

County Counsel has reviewed and approved the contract as to legal form and effect.

### **FINANCIAL CONSIDERATIONS**

This is a multi year project in the Roads Fund FY 2012-13 budget at \$1,060,000 – WBS 300386. The total project costs are estimated at \$1,650,000. Funding for the project will come from Proposition 1B, Federal High Risk Rural Road Program (HRRR) and the Road Fund.

Grant funding from Federal HRRR has been awarded in the amount of \$900,000. The budget currently reflects an amount of \$180,000. It is necessary for Your Honorable Board to authorize a budget adjustment, by a 4/5<sup>th</sup> s vote, in the amount of \$590,000 to increase the appropriation and the associated Federal HRRR funding for this project. The budget adjustment also decreases the contribution from the Road Fund by \$130,000 for a net increase of \$590,000. The savings to the Road Fund will be returned to reserves for future Road projects.

Please see Exhibit "A" for an estimated cost breakdown of the project.

### **RESULTS**

The immediate result of the recommended action will be the construction of this project, which will improve the road for the safety of the motoring public. This, in turn, will result in a safer, more livable community.

File: Contract No. 300386

c: Accounting Officer  
Resident Engineer  
Construction Engineer  
Whitaker Construction Group, Inc., Contractor  
Raminha Construction, Inc., Contractor

Reference: 13JAN29-BB-1

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## **ATTACHMENTS**

1. Vicinity Map
2. Exhibit A - Project Cost Estimates
3. A. Evaluation of Good Faith Effort of Raminha Construction, Inc. (dated 12/27/12)
4. B. County Notice of Finding of Non-Responsiveness (dated 12/28/12)
5. C. Good Faith Effort Reconsideration Committee Determination (dated 1/15/13)
6. D. Raminha Construction, Inc. Bid Documents (12/20/12) – Clerk's File
7. E. Raminha Construction, Inc. Good Faith Effort (received 12/21/12) – Clerk's File
8. F. P. Terence Schubert, Esq. Letter Requesting Reconsideration (dated 1/2/13)
9. G. P. Terence Schubert, Esq. Letter with additional documentation on behalf of Raminha Construction, Inc. (dated 1/8/13)
10. H. Table of Contents of Reference Documents Provided to the Reconsideration Committee by County Public Works Staff for the Reconsideration Meeting – Clerk's File
11. I. P. Terence Schubert, Esq. Letter on behalf of Raminha Construction, Inc. (dated 1/14/13)
12. J. Pages from the Notice to Bidders, Bid Proposal and Special Provisions Sections of the Project Advertisement
13. K. DBE Commitment Forms from the other responsive bidders